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Country context (optional)

Please use this field to provide any relevant contextual or background information about the country's law, policy, and practice, or the stateless population, to help contextualise the information in the survey (optional question).

International and Regional Instruments

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|-------------------|---|---|--|--|
| IOB.1.a | 1954 Convention | Is your country party to the 1954 Statelessness Convention? | UN Convention Relating to the Status of Stateless Persons, 1954 | Yes | United Nations Treaty Collection |
| IOB.1.b | | If yes, when was ratification/accession? | | Ratification on 27 May 1960 | United Nations Treaty Collection |
| IOB.1.c | | Are there reservations in place? Please list them. | Best practice is no reservations. If there are, they should have little or no impact on the rights of stateless people. | No | United Nations Treaty Collection |
| IOB.1.d | | Does the Convention have direct effect? | Best practice is that the Convention has direct effect, though this may depend on the legal regime. | Yes | Loi portant approbation de la Convention relative au Statut des Apatrides UNHCR, Mapping Statelessness in Belgium , October 2012, para. 218 |
| IOB.2.a | 1961 Convention | Is your country party to the 1961 Statelessness Convention? | UN Convention on the Reduction of Statelessness, 1961 | Yes | United Nations Treaty Collection |
| IOB.2.b | | If yes, when was ratification/accession? | | Accession on 1 July 2014 | United Nations Treaty Collection |
| IOB.2.c | | Are there reservations in place? Please list them. | As above | Declaration concerning Article 2: The Belgian Government declares that, for Belgium, the category of “foundlings” concerns found children who are believed to be new-born. Declaration concerning Article 8(3): Belgium reserves the right to deprive of his nationality a person who did not acquire it by virtue of a Belgian individual on the day of his birth, or who was not granted it under the Belgian Nationality Code, in the cases currently provided for under Belgian legislation, namely [...] | United Nations Treaty Collection |
| IOB.2.d | | Does the Convention have direct effect? | As above | Yes | Loi portant assentiment à la Convention des Nations unies sur la réduction des cas d'apatridie [FR] |
| IOB.3.a | Other conventions | State party to European Convention on Nationality 1997? Please list any reservations. | European Convention on Nationality, 1997 | No | Council of Europe Treaty Office UNHCR, Mapping Statelessness in Belgium , October 2012, para. 485 |
| IOB.3.b | | State Party to European Convention on Human Rights 1950? Please list any relevant reservations. | European Convention on Human Rights, 1950 | Yes No relevant reservations | Council of Europe Treaty Office |
| IOB.3.c | | State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Please list any reservations. | Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006 | No | Council of Europe Treaty Office UNHCR, Mapping Statelessness in Belgium , October 2012, para. 485 |
| IOB.3.d | | Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive)? Please list any relevant reservations. | Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive) | Yes | Eur-lex |

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| IOB.3.e | State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations. | Convention on the Rights of the Child, 1989 | Yes No reservations but interpretative declaration regarding foreign nationals, differences in treatment and discrimination. "With regard to Article 2(1), according to the interpretation of the Belgian Government, non-discrimination on grounds of national origin does not necessarily imply the obligation for States automatically to guarantee foreigners the same rights as their nationals. This concept should be understood as designed to rule out all arbitrary conduct but not differences in treatment based on objective and reasonable considerations, in accordance with the principles prevailing in democratic societies." | United Nations Treaty Collection |
| IOB.3.f | State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations. | International Covenant on Civil and Political Rights, 1966 | Yes No relevant reservations | United Nations Treaty Collection |
| IOB.3.g | State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations. | International Covenant on Economic, Social and Cultural Rights, 1966 | Yes No reservations | United Nations Treaty Collection |
| IOB.3.g | State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations. | Convention on the Elimination of all Forms of Discrimination Against Women, 1979 CEDAW, Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness | Yes No reservations | United Nations Treaty Collection |
| IOB.3.i | State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Please list any relevant reservations. | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 | Yes No reservations | United Nations Treaty Collection |
| IOB.3.j | State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1966? Please list any relevant reservations. | International Convention on the Elimination of All Forms of Racial Discrimination, 1965 | Yes No reservations | United Nations Treaty Collection |
| IOB.3.k | State Party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990? Please list any relevant reservations. | International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 | No | United Nations Treaty Collection |
| IOB.3.l | State Party to the Convention on the Rights of Persons with Disabilities 2006? Please list any relevant reservations. | Convention on the Rights of Persons with Disabilities, 2006 | Yes No reservations | United Nations Treaty Collection |

Stateless Population Data

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|--------------------------|--|---|--|---|
| POP.1.a | Availability and sources | Does the State have a 'stateless' category in its data collection systems (e.g. census)? Please list available figures for the total stateless population on the territory and describe how data is disaggregated (e.g. by sex, age, residence). | <p>CEDAW, Gen. Rec. 32 (2014): States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>ISI, The World's Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> | <p>Yes, there is a 'stateless' category in the National Registry in Belgium.</p> <p>The National Registry includes the Population Register (nationals in Belgium); the Foreigners Register (non-nationals in Belgium); the diplomatic and consular Registers (nationals abroad) and the Waiting Register (asylum seekers).</p> <p>On 1 January 2021 there were 884 people registered as stateless in the National Registry.</p> <p>This only includes persons who have been recognised as stateless and issued a long-term residence permit.</p> <p>Data is disaggregated by age and sex (see source)</p> | <p>Immigration Office, Cartes pour étrangers et documents de séjour</p> |
| POP.1.b | | Do public authorities define data categories that may overlap (e.g. unknown nationality) or where stateless people might be more highly represented (e.g. Palestinian)? Please explain and provide any available figures. | As above | <p>Yes, there is a data category 'undetermined nationality'. This includes people whose nationality cannot be determined at birth, people without identity documents from their country of origin and people of Palestinian origin. The Immigration office indicates in its 2019 Annual Report that measures have been taken to limit the number of people of Palestinian origin registered in the "undetermined nationality category". The figure may also include applicants under the statelessness determination procedure who obtained a residence permit on other grounds.</p> <p>On 1 January 2021 there were 25,622 persons registered as 'undetermined nationality' in the National Registry. This is a significant increase from 4,248 people in 2017, mainly due to new administrative practices (transition from paper to electronic IDs), which allowed children who had not previously been registered to be registered.</p> <p>There is also a category 'Palestinian authority' (West-Bank and Gaza).</p> <p>On 1 January 2021 there were 3,341 people registered under the category 'Palestinian authority' in the National Registry.</p> <p>People are registered either under the category 'undetermined nationality' or 'Palestinian authority', therefore there is no risk of overlap.</p> | <p>Immigration Office, Annual Statistics 2019 (Carte pour étrangers et documents de séjour)</p> <p>Immigration Office, Annual Statistics 2019 (Carte pour étrangers et documents de séjour)</p> <p>Immigration Office, Annual Statistics 2019 (Carte pour étrangers et documents de séjour)</p> |
| POP.1.c | | What is UNHCR's estimate for the stateless/at risk of statelessness population and what is the source for this estimate? | As above | <p>According to UNHCR, in 2019 there were 11,208 persons under its statelessness mandate in Belgium. In 2021, the figure provided is 1,178 stateless persons. This significant reduction is explained in a note to the data, which states that the previous figure included people registered as 'undetermined nationality' by the Ministry of Interior, which was not clearly defined. So, people in this category have been removed from the statistics for stateless persons in Belgium.</p> | <p>UNHCR, Refugee Data Finder: https://www.unhcr.org/refugee-statistics/download/?url=U1BT4v</p> |

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| POP.1.d | | Have there been any surveys or mapping studies to estimate the stateless population in the country? | As above | The most up to date and complete mapping study is UNHCR, Mapping Statelessness in Belgium, October 2012. | UNHCR, Mapping Statelessness in Belgium , October 2012 See also " Demandeurs d'asile, réfugiés et apatrides en Belgique : un essai de démographie des populations demandeuses ou bénéficiaires d'une protection internationale " 2008 |
| POP.1.e | | Are there any other sources of estimates for the stateless population not covered by the above? Please list sources and figures. | As above | No. | |
| POP.1.f | | Are there issues with the reliability of data or indications that the stateless population may be over/under reported? If yes, please describe. | As above | <p>Yes. Firstly, the use of the registration category 'undetermined nationality' in the official data is causing significant uncertainty as to the situation of people who are registered under this group, with regard to statelessness in particular.</p> <p>Secondly, the population registered in the National Register under the category 'stateless' only includes the population:</p> <ul style="list-style-type: none"> - recognised as stateless by a court and - holding a valid residence permit issued for a period of more than three months. <p>Persons not covered by administrative data in the National Register include:</p> <ul style="list-style-type: none"> - persons who are undergoing a procedure to determine statelessness, who do not have a valid residence permit or have a residence permit issued for less than three months; - persons recognised as stateless who do not have a valid residence permit, - other persons who are stateless but who are not in a procedure and who do not have a valid residence permit or have a residence permit issued for less than three months. | <p>Myria Opinion to the Committee on the Interior, General Affairs and Civil Service Draft law No. 3487/1 amending the law of 15 December 1980 on access to the territory, residence, establishment and expulsion of foreigners, in order to regulate the right of residence of stateless persons (24 January 2019)</p> <p>UNHCR, Refworld Mapping Statelessness in Belgium, October 2012, para 108</p> |
| POP.1.g | | Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the State also counts these groups in figures for the stateless population (i.e. to avoid under/over-reporting). | <p>As above.</p> <p>EASO/EUAA, Practical guide on registration (2021): States should collect information from applicants for international protection about their nationality(ies) and potential lack of nationality. When registering families, it is important to collect this data for each family member.</p> | <p>On 1 January 2020 there were 143 stateless refugees registered in the National Registry (included in the total figures of 951 people registered as 'stateless' in the National Registry (see POP.1.a).</p> <p>Asylum seekers are registered separately, outside the National Register, as required by EUROSTAT. This table shows the number of stateless persons registered as asylum seekers in Belgium, per month. Caution is required when reading this table as the numbers are rounded to the nearest multiple of 5 (this is how the EUROSTAT table works, not requested by Belgium), which affects the result per month/per year. However, the rounding is smart and is done on the aggregate, so this technical characteristic has no impact on the ranking of Belgium at EU level.</p> <p>Asylum-seekers are registered in a separate registry (the Waiting Registry).</p> <p>There is a risk of overreporting, as a stateless asylum-seeker who is granted asylum will appear in both sections (stateless asylum-seekers and stateless refugee) but only during the year of the recognition).</p> | <p>Immigration Office, Annual Statistics 2019</p> <p>Eurostat, Persons subject of asylum applications pending at the end of the month by citizenship, age and sex Monthly data (rounded)</p> |

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| POP.2.a | Stateless in detention data | Does the State record and publish figures on stateless people held in immigration detention? If yes, please provide. | <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>CEDAW, Gen. Rec. 32 (2014): State parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>ISI, The World's Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> <p>Equal Rights Trust, Guidelines (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> | <p>The Immigration Office does not usually or regularly publish figures on stateless people held in immigration detention.</p> <p>The best available statistics are produced following a request by a member of Parliament (<i>Questions parlementaires</i>), which implies that the Immigration Office is to some extent, recording some figures on stateless people. But it is only through thorough bilateral dialogue with the authorities that the figures and the guidance on how to understand them can be accessed.</p> | |
| POP.2.b | | Does the State record and publish figures on people released from immigration detention due to un-removability? If yes, please provide. | As above | As above. | |

Statelessness Determination and Status

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|----------------------------------|---|--|---|--|
| SDS.1.a | Definition of a stateless person | Is there a definition of a stateless person in national law? Do the definition and exclusion provisions align with the 1954 Convention? Please provide details. | 1954 Convention : Articles 1(1) & 1(2). | There is no definition of a stateless person in Belgian law. The definition in the 1954 Convention (which has direct effect) is applied. | Loi portant approbation de la Convention relative au Statut des Apatrides et des Annexes, signées à New-York, le 28 septembre 1954 EMN Ad-Hoc Query on recognition of stateless persons |
| SDS.2.a | Training | Is there training to inform different public authorities about statelessness? If yes, please provide details (e.g. who provides training to whom/how often?) | UNHCR Executive Committee, Conclusion No. 106 (LVII) (2006) : Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons. | UNHCR sporadically provides training to family court judges and public prosecutors (December 2017 and December 2018), and to local civil registrars (May 2016 and January 2017). | Response sought from UNHCR |
| SDS.2.b | | Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency). | UNHCR, Good Practices Papers – Action 6 (2020) : Officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels. UNHCR, Geneva Conclusions (2010) : It is recommended that States provide specialised training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations. | UNHCR provides training to judges on statelessness in cooperation with the Institute for Judicial Training. There have been two trainings so far (December 2017 and December 2018). UNHCR sporadically organises training for lawyers (October 2014 and September 2017). NANSSEN organises regular peer-support and exchange of information for lawyers specialised in immigration law including on statelessness (e.g., April 2019, December 2020 and May 2022). | UNHCR Belgium & NANSSEN |
| SDS.3.a | Existence of a dedicated SDP | Which of the following best describes the situation in your country? Choose only one and then proceed to question indicated. 1. There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure, leading to a dedicated statelessness status (answer Question SDS.3.b. and proceed to Question 4a). 2. There is no dedicated SDP leading to a dedicated statelessness status, but there are other procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.), or other routes through which stateless people could regularise their stay and/or access their rights (answer Question SDS.3.b. and proceed to Question 10a). 3. There is a dedicated statelessness status but no formal procedure for determining this (answer Question | UNHCR, Handbook on Protection (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. UNHCR, Good Practices Papers – Action 6 (2020) : Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention. | 2. There is a judicial procedure, although in our view it does not constitute a formal Statelessness Determination Procedure (SDP) due to its shortcomings. A person can be determined to be stateless by one of six family courts. There are no specific procedural safeguards in place, and the person recognised as stateless does not derive any rights from this recognition, beyond the right to a social allowance. | Art. 572bis, 1° of the Judicial Code (substantive competence) Art. 632bis of the Judicial Code (territorial competence) UNHCR, Mapping Statelessness in Belgium , October 2012, p. 48, para. 221-222 UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons , 11 July 2016, p. 2. UNHCR, Campaign Update , October 2017, October 2017, p. 4 EMN Ad-Hoc Query on recognition of stateless persons EMN Ad-Hoc Query on Joint ad-hoc query COM & LU EMN NCP on statelessness (part 1) Myria, La migration en chiffres et en droits 2015 , p. 83-86 |

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| | | <p>SDS.3.b. and proceed to Question 15a).</p> | | | |
| <p>SDS.3.b</p> | <p>Temporary protection for people fleeing war</p> | <p>Does the State offer a temporary form of protection to stateless people and people at risk of statelessness from Ukraine? Please describe any barriers for stateless people or people at risk of statelessness in accessing the territory or receiving protection (e.g. for people who cannot fulfil eligibility requirements in line with the EU Temporary Protection Directive, if applicable).</p> | <p>EU Temporary Protection Directive (2001) EU Council Implementing Decision (2022) establishing the existence of a mass influx of displaced persons from Ukraine & European Commission, Operational guidelines ENS, Briefings on access to protection for stateless people fleeing Ukraine: Everyone fleeing the war in Ukraine should be guaranteed access to the territory. European countries must extend temporary forms of protection to all stateless people and those with undetermined nationality who cannot meet current eligibility requirements, due to their statelessness or documentation status. Lack of documentation should not prevent access to international protection or other forms of protection.</p> | <p>Belgium offers three routes to protection for people fleeing Ukraine, including eligible stateless people: refugee status, subsidiary protection, and temporary protection. Stateless people are only eligible for temporary protection if they were recognised as a stateless person in Ukraine or were beneficiaries of international protection or equivalent national protection in Ukraine. There is a certain degree of flexibility in documentation requirements, and the authorities proceed on a case by case basis. Beneficiaries of international protection and recognised stateless persons in Ukraine must provide proof of status in Ukraine and an identity document with a photograph (e.g. ID cards, expired passports, travel documents, etc.). They may also need to prove family relationship, cohabitation, or dependency if applying for protection together with another eligible person. Belgium does not seem to recognise travel documents issued by Ukraine to beneficiaries of international protection Stateless or undocumented persons who are not eligible for temporary protection may apply for refugee status or subsidiary protection. UNHCR’s Ukraine portal indicates that 63,733 refugees from Ukraine have registered for temporary protection in Belgium (as of December 2022), but the lack of disaggregated data makes it impossible to know how many of these are stateless people. Anecdotal evidence mentions that less than six stateless people were granted temporary protection. Rights upon recognition of temporary protection include: right to reside (one year); right to work; right to suitable accommodation; social welfare; medical care; education for children and temporary education for adults; transfers of family members to another Member State for reunification; right to apply for asylum at any time.</p> | <p>Immigration Office, ‘Temporary Protection’: https://dofi.ibz.be/en/themes/ukraine/temporary-protection</p> <p>Immigration Office, ‘Stateless Persons and Third-country Nationals’: https://dofi.ibz.be/en/themes/ukraine/temporary-protection/stateless-persons-and-third-country-nationals</p> <p>Info Ukraine website: https://info-ukraine.be/en/assistance-belgium</p> <p>UNHCR’s Operational Data Portal on the Ukraine Refugee Situation: https://data.unhcr.org/en/situations/ukraine</p> <p>European Network on Statelessness, Country Briefing, Belgium: Information for stateless people and those at risk of statelessness fleeing Ukraine, June 2022: https://www.statelessness.eu/statelessness-ukraine-crisis</p> |

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| <p>SDS.10.a</p> | <p>Procedures in which statelessness can be identified and other routes to regularisation (Group 2)</p> | <p>If there is no dedicated SDP leading to a statelessness status, are there any procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.)?</p> | <p>ENS (2013): For SDPs to be effective, the determination must be a specific objective of the mechanism in question, though not necessarily the only one. ECtHR, Hoti v. Croatia (2018): [the State has a] positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of [their] further stay and status determined.</p> | <p>There is a judicial procedure through which a person can be determined to be stateless by one of six family courts. There are no specific procedural safeguards in place, and recognition of statelessness by the family courts does not result in automatic permission to stay nor any protection.</p> <p>The Belgian Government committed in 2020 to addressing the right of residence of stateless persons (under certain conditions). In May 2021, civil society organisations were invited by the Commission appointed by the Government to draft a new Migration Code to submit proposals about the reform. The issue of residence permits for stateless persons was among the topics discussed by several organisations. Hearings were organised in July 2021. The Commission and the Cabinet continue their work. There is no indication available yet as to the content of the reform with regard to statelessness, although the Government made a pledge to introduce residence permits for stateless people at the High-Level Officials Meeting under the Global Refugee Forum process in December 2021.</p> <p>Statelessness may also be identified during the asylum procedure. In practice, the Office of the Commissioner General for Refugees and Stateless Persons sometimes refers to the judicial procedure in its decision</p> | <p>Art. 572bis, 1° of the Judicial Code (substantive competence)</p> <p>Art. 632bis of the Judicial Code (territorial competence)</p> <p>UNHCR, Mapping Statelessness in Belgium, October 2012, p. 48, para. 221-222</p> <p>UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons, 11 July 2016, p. 2.</p> <p>UNHCR, Campaign Update, October 2017, October 2017, p. 4</p> <p>EMN Ad-Hoc Query on recognition of stateless persons</p> <p>EMN Ad-Hoc Query on Joint ad-hoc query COM & LU EMN NCP on statelessness (part 1)</p> <p>Myria, La migration en chiffres et en droits 2015, p. 83-86</p> <p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, art. 9bis.</p> <p>Chambre des Représentants, Exposé d'orientation politique. Asile, migration et loterie nationale, 4 November 2020 p. 6-7.</p> <p>Recording of Belgian Government Pledge at High-Level Officials Meeting, Dec 2021: https://www.youtube.com/watch?v=Vj-VeCJeINc&t=6608s</p> |
| <p>SDS.10.b</p> | | <p>Are there any other routes through which stateless people could regularise their stay and/or access their rights without their statelessness being identified or determined?</p> | <p>1954 Convention UNHCR, Handbook on Protection (2014): It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments.</p> | <p>People whose statelessness has not been determined by a court can in theory apply for family reunification if they have family members in Belgium or for a permission to stay on humanitarian grounds. In practice, however, this will be difficult if they don't have identity and civil status documents and as there are no criteria set in law for humanitarian stay.</p> | <p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, art. 9bis, art. 10-12bis and 40-42 quarter.</p> |
| <p>SDS.11.a</p> | <p>Access to procedures (Group 2)</p> | <p>Please provide details on how statelessness may be identified in other procedures, which authority is competent to examine and/or identify statelessness and evaluate appropriateness to the national context.</p> | <p>UNHCR, Handbook on Protection (2014): States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise. UNHCR, Good Practices Papers – Action 6 (2020): It is important that examiners develop expertise while ensuring that the procedures are accessible. Efficient referral mechanisms should be established, while officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels.</p> | <p>Examination of statelessness claims is conducted by one of six family courts. Before 2017, all first instance courts were competent to examine statelessness. The centralisation to six courts was aimed at specialisation of magistrates. However, the family courts have not yet acquired the necessary expertise in statelessness and nationality matters. Practice and chances of success of the application may vary from one court to other.</p> <p>To initiate a judicial procedure for the determination of statelessness, submissions must be made in writing, in the form of a unilateral petition, with the assistance of a lawyer, and in the language of the territorially competent court (i.e. Dutch, French, or German). Applications must take the form of a unilateral petition, which is very formalistic and requires several technical legal entries, such as the object of the petition and the jurisdiction. The qualified assistance of a lawyer is needed for the petition to have any chance of success. The family court applies the regular court fee, which is currently 165 EUR per applicant. A person with insufficient financial means may apply for an exemption from payment of fees. There is an automatic right of appeal, but the fees before the courts of appeal are currently 400 EUR.</p> | <p>Art. 572bis, 1° of the Judicial Code (substantive competence)</p> <p>Art. 632bis of the Judicial Code (territorial competence)</p> <p>Art.664-668 1026-1028, 1050 of the Judicial Code</p> <p>UNHCR, Mapping Statelessness in Belgium, p. 48-49, p. 61, recommendation 12</p> <p>Cours et tribunaux Art. 691 Code des droits d'enregistrement, d'hypothèque et de greffe.</p> <p>Evidence from practitioners.</p> |

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| | | | | <p>Applicants are not required to be lawfully staying on the territory, and there is no time limit to access to the judicial procedure. There is no timeframe set in law or policy for the procedure, and its duration seems to vary from one court to another, but generally appears to be long (one year on average). The fact that the Crown Prosecutor's Office does not have a deadline by which it is required to submit its opinion has been highlighted as one cause for delays.</p> <p>Although only a very limited number of decisions are published, there is some evidence of errors in decision-making, notably regarding applicants of Palestinian origin.</p> <p>UNHCR may play a role in the procedure by monitoring and/or intervening in individual cases brought to its attention.</p> <p>There are no quality assurance audits of the judicial procedure. The 2014 Federal Governmental Agreement foresaw an evaluation of the centralisation of the competence for statelessness determination implemented in 2017 after one year, but no initiative has been taken.</p> <p>Competent authorities are not authorised to initiate an SDP ex officio. There are no referral mechanisms even though the independent quasi-judicial body competent to grant international protection in Belgium is officially named "Commissioner-General for Refugees <i>and Stateless persons</i>" (CGRA/CGVS).</p> <p>In accordance with the Immigration Act, the CGRA is the competent authority for stateless persons recognised as such by the family courts (as well as for recognised refugees). This means that they issue birth certificates, identity certificates etc. However, there is no legal basis for the issuance of "a certificate confirming the status of stateless person", nor is this certificate a condition for entry in the Foreigners Register. Registration is based on the residence permit when it is issued by the Immigration Office. For this reason, and from 2015 onwards, the CGRA no longer issues "certificates of confirmation of statelessness status".</p> <p>Statelessness may also be identified during the asylum procedure. It could lead to recognition of refugee status; however, NANSEN has no first-hand evidence of this. In addition, in practice, the Office of the Commissioner General for Refugees and Stateless Persons sometimes refers to the judicial procedure in its decisions.</p> | <p>Court of Appeal Ghent, 20 April 2017 (in Dutch) Court of Appeal Brussels, 5 June 2018 (in Dutch) Court of Appeal Antwerp, 3 October 2018 (in Dutch)</p> <p>Responses sought from UNHCR</p> <p>Chambre des Représentants, Accord de gouvernement, 10 October 2014, p. 168</p> <p>Commissariat Général aux Réfugiés et aux apatrides</p> |
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| SDS.11.b | | Are there obligations in law on authorities to consider a claim of statelessness? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Access to the procedure must be guaranteed.</p> <p>EASO/EUAA, Practical guide on registration (2021): Determining if applicants are stateless is essential when assessing the need for international protection. At registration, it is vital to collect information and detect possible cases of statelessness, but it is not appropriate to determine a person’s statelessness at the registration stage. Statelessness determination should be carried out only by a competent decision-making authority at an appropriate point in time following the final assessment of an asylum claim.</p> | The family court is obliged to consider a statelessness claim made before it, but only if all the requested formalities are fulfilled. Other authorities are not obliged to consider a statelessness claim made within other procedures. | NANSEN |
| SDS.11.c | | Are there clear, accessible instructions for stateless people on how to claim their rights under the 1954 Convention and/or be identified as stateless? | <p>1954 Convention</p> <p>UNHCR, Handbook on Protection (2014): For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.).</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): Information on the procedure and counselling services must be available to potential applicants in a language they understand.</p> | There are no instructions available on how to make a claim of statelessness. | UNHCR, Mapping Statelessness in Belgium , p. 48, para. 312 |
| SDS.11.d | | Is there cooperation between agencies that may have contact with stateless people? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice.</p> | There are no referral mechanisms between relevant agencies. Local authorities (civil registrars) sometimes advise people with undetermined nationality to initiate a procedure for statelessness determination through the family court, but this is not a structured practice. | UNHCR, Mapping Statelessness in Belgium , para 228-229, p. 48, and p. 61, recommendation 12 |
| SDS.12.a | Assessment (Group 2) | Who has the burden of proof when determining or identifying statelessness (in law and practice)? | <p>UNHCR, Handbook on Protection (2014): The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts).</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): SDPs must take into consideration the difficulties inherent in proving statelessness.</p> <p>UNHCR, Geneva Conclusions (2010): In statelessness determination procedures, the burden of proof should therefore be shared between the applicant and the authorities responsible for making the determination. Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence.</p> <p>ECtHR, Hoti v. Croatia (2018): State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness.</p> | The applicant bears the burden of proof in law, by application of the principle " <i>actor incumbit probatio</i> ". In practice the burden of proof lies almost entirely with the applicant. Very exceptionally, Crown Prosecutors (who have an advisory role in the procedure) will make enquiries with consular authorities. | UNHCR, Mapping Statelessness in Belgium , para 287 - 291 Belgium, Court of First Instance Dinant, 3 April 2015, unpublished (in French) |
| SDS.12.b | | What is the standard of proof to evidence statelessness? | <p>UNHCR, Handbook on Protection (2014): States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree').</p> <p>UNHCR, Good practices in nationality laws (2018): The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence.</p> | The standard of proof is unclear. With regard to the States from which an applicant needs to provide evidence of lack of nationality, it is accepted that the enquiry can be limited to the States with which the applicant enjoys a relevant link, in particular by birth on the territory, descent, marriage, or habitual residence. | UNHCR, Mapping Statelessness in Belgium , para. 283. UNHCR, Mapping Statelessness in Belgium , para. 280. Belgium, Court of Appeal Brussels, 9 June 2016, unpublished (in Dutch). UNHCR, Mapping Statelessness in Belgium , para. 282. |

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| | | | ECtHR, Hoti v. Croatia (2018) : If statelessness is a relevant factor in the context of access to human rights, the standard of proof when determining the status of statelessness cannot be too high. | | <p>Belgium, Court of First Instance Dinant, 3 April 2015, unpublished (in French)</p> <p>Belgium, Court of First Instance Bruges, 23 November 2015 (in Dutch)</p> <p>Belgium, Court of First Instance Antwerp, 2 March 2016, unpublished (in Dutch)</p> <p>Belgium, Court of Appeal Ghent, 10 March 2016 (in Dutch)</p> <p>Belgium, Court of First Instance Verviers, 14 March 2016, unpublished (in French)</p> <p>Belgium, Court of Appeal Brussels, 9 June 2016, unpublished</p> <p>Belgium, Court of Appeal Ghent, 16 June 2016, (in Dutch)</p> <p>Belgium, Court of First Instance Antwerp, 3 October 2016, unpublished (in Dutch)</p> |
| SDS.12.c | | Is there clear guidance for decision makers on how to identify or determine statelessness (including e.g. sources of evidence and procedures for evidence gathering, etc.)? | ENS (2013) : Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances. | <p>There is no clear guidance for decision makers (judges from the Family Courts) on how to determine statelessness.</p> <p>There are no specific measures in place to guarantee substantive equality for women, children and other groups at risk of discrimination in the determination procedure. The general legal framework on anti-discrimination is applicable.</p> | NANSEN |
| SDS.13.a | Procedural safeguards (Group 2) | Is free legal aid available to stateless people generally? | <p>UNHCR, Handbook on Protection (2014): Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means.</p> <p>ENS (2013): If state funded legal aid is available, it should be provided to stateless claimants. If there is no state funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people.</p> | <p>Free legal aid is available for applicants who have insufficient means of subsistence, both at first instance and on appeal. There is no presumption of insufficient means of subsistence for applicants for statelessness determination, while there is such a presumption for asylum seekers.</p> <p>The challenges in accessing free legal aid in Belgium are well documented, in particular for undocumented migrants, people subject to detention, and people in need of international protection.</p> <p>In 2020, the federal government has committed to assess the possibilities of improving the quality of legal aid to vulnerable groups.</p> | <p>Judicial Code, Art. 508/13/1</p> <p>See ECHR Anakomba Yula c. Belgium (2009)</p> <p>See Constitutional Court 21 June 2018 (annulation of provisions from 2016 legislative reform of legal aid)</p> <p>See ECRE/ELENA Legal Note on Access to Legal Aid in Europe</p> <p>See UNHCR Memorandum en matière de protection des réfugiés, des bénéficiaires de la protection internationale et des apatrides (2014), Recommendation 10</p> <p>Myria, Rapport annuel Migration 2015</p> <p>See "La réforme de l'aide juridique renforce les inégalités", Isabelle Doyen, ADDE asbl (2016)</p> <p>ADDE, L'aide juridique aux demandeurs d'asile, recommandations pour une amélioration structurelle, (2011)</p> <p>Agentschap Integratie en Inburgering, bijzondere voorwaarden kosteloze rechtsbijstand voor personen zonder wettig verblijf in België (2016)</p> <p>UCL, CEDIE, Centre Charles De Visscher, recherche sur l'accompagnement juridique des demandeurs d'asile (en collaboration avec le UNHCR)</p> |

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| | | | | | <p>NANSEN preliminary findings on access to legal aid in detention 2018</p> <p>UNHCR, Accompagnement juridique des demandeurs de protection internationale en Belgique, September 2019</p> <p>Accord de gouvernement, 30 septembre 2020, p. 41.</p> |
| SDS.13.b | | Is free interpreting available to stateless people? | <p>UNHCR, Handbook on Protection (2014): The right to assistance with interpretation/translation [is] essential.</p> <p>ENS (2013): Assistance should be available for translation and interpretation.</p> | Free interpreting is not automatically offered. The applicant's lawyer must arrange for an interpreter if this is required. In case of insufficient financial means a request can be submitted to have the costs of interpretation covered by the state. | Art. 664-668 of the Judicial Code |
| SDS.13.c | | Are there other procedural safeguards in place in procedures through which stateless people may have their statelessness identified or determined, or regularise their stay (e.g., decisions given in writing with reasons, right to an interview, time limit, right of appeal, audits in decision-making, etc.)? | <p>UNHCR, Handbook on Protection (2014): States are encouraged to incorporate the safeguard that decisions are made in writing with reasons. It is undesirable for a first instance decision to be issued more than six months from submission of an application. In exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months. An effective right to appeal against a negative first instance decision is an essential safeguard in an SDP.</p> | <p>The family court judge has the option to invite the applicant and their lawyer to a hearing in chambers (not public). In practice, a hearing is usually organised. This cannot, however, be seen as an interview with required procedural guarantees.</p> <p>Decisions (judgments) are given in writing with reasons.</p> <p>The new Secretary of State for Asylum and Migration foresees an audit of asylum and immigration services, but no evaluation is planned with regard to statelessness.</p> | <p>Art. 1028 of the Judicial Code</p> <p>Art. 149 of the Belgian Constitution</p> <p>Chambre des Représentants, Exposé d'orientation politique. Asile, migration et loterie nationale, 4 November 2020 p. 5-6.</p> |
| SDS.14.a | Protection (Group 2) | Are there any rights granted to stateless people on the basis of their statelessness? If yes, please provide details. | <p>UNHCR, Handbook on Protection (2014): The status granted to a stateless person in a State Party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty.</p> | No. | |
| SDS.14.b | | <p>Are stateless people otherwise able to access their rights under the 1954 Convention? Please state whether stateless people can access:</p> <ul style="list-style-type: none"> - right to reside - travel document - work - healthcare - social security - education - housing - family reunification - right to vote. <p>[Section complete, proceed to DET]</p> | <p>1954 Convention</p> <p>UNHCR, Handbook on Protection (2014): The status granted to a stateless person in a State Party must reflect international standards. It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable. States parties are encouraged to facilitate the reunification of those with recognised statelessness status with their spouses and dependents. The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.</p> | <p>Applicants do not have automatic residence status while their claim of statelessness is assessed by the family courts. In the past there have been a few cases in which courts granted residence status to applicants for recognition as stateless during the determination procedure. No recent examples were found. In several cases, courts have granted residence status to individuals already determined to be stateless who were awaiting a decision on their request for a residence permit.</p> <p>The current government has committed to addressing the right of residence of stateless persons (under certain conditions).</p> <p>Lacking a residence status on the basis of their pending application, applicants are not entitled to work. In principle, applicants for statelessness status (who don't have a residence status on any other basis) are only entitled to urgent medical assistance and no other social assistance. This is also the case for all undocumented migrants. Without a residence status on another basis, applicants for statelessness status face a risk of detention as they are undocumented</p> <p>Recognition of statelessness by the family courts does not result in automatic permission to stay. By default, in the absence of a fully-fledged statelessness status (including a residence permit or linking to a dedicated procedure for accessing a residence status) recognised stateless persons apply for permission to stay on humanitarian grounds (art. 9bis Immigration Law). However, there are no criteria set in law for humanitarian stay. The length of the residence permit granted on humanitarian grounds is at the</p> | <p>UNHCR, Mapping Statelessness in Belgium, para. 427-428, 436, 440-441.</p> <p>UNHCR, Mapping Statelessness in Belgium, para. 428.</p> <p>Belgium, Tribunal of First Instance Charleroi, 5 January 2018, unpublished.</p> <p>Article 57 §2 of the Law on public welfare centres</p> <p>Chambre des Représentants, Exposé d'orientation politique. Asile, migration et loterie nationale, 4 November 2020 p. 5-6.</p> <p>Accord de gouvernement, 30 septembre 2020, p. 96.</p> <p>UNHCR, Mapping Statelessness in Belgium, para 455</p> <p>UNHCR, Mapping Statelessness in Belgium, para 461</p> <p>Art. 9bis and 10 of the Immigration Law (in French)</p> <p>Art. 57 of the Consular Code (in French)</p> <p>Ministerial circular, 15 September 2017 (in Dutch)</p> |

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| | | | | <p>discretion of the Immigration Office (usually a limited permit valid for one year and renewable). A travel document is issued to people recognised as stateless if and only when they obtain a residence permit. People recognised as stateless holding a residence permit qualify for family reunification under the general regime applicable to third-country nationals.</p> <p>People recognised as stateless are subject to the general legislation on work authorisation, social security, healthcare and education.</p> <p>In line with general rules for foreigners (non-EU nationals), stateless people would have the right to vote in local elections if they have been legally and uninterruptedly residing in Belgium for 5 years and they undertake in writing to respect the constitution, the laws of the Belgian people and the ECHR. They have to file a mandatory written request prior to voting.</p> <p>Stateless people with a residence permit on humanitarian grounds (9bis Immigration Law) are authorised to work by law, have access to social security, healthcare and to primary, secondary, and higher education under the same conditions as third country nationals.</p> <p>People recognised as stateless who do not have a residence status, are not entitled to work but they do have access to primary and secondary education if they are minors. A school cannot refuse to enrol a pupil under the age of 18 or grant them a diploma solely because they do not have a residence permit. Without a residence permit, stateless people are excluded from social security and healthcare, and in principle from both forms of public relief (social integration and social aid). They are only entitled to urgent medical care, under the same conditions as undocumented migrants. Jurisprudence has been diverse on this issue, with some judges ordering social aid on varying legal grounds.</p> <p>The Belgian Constitutional Court held that the difference in treatment with regard to the right of residence between recognised refugees and recognised stateless persons who involuntarily lost their nationality and cannot obtain a legal and durable right of residence in another state, constitutes discrimination since different treatment is applied to persons who find themselves in comparable situations. According to the Constitutional Court, this discrimination stems from the absence of any legislative provision granting persons recognised as stateless in Belgium a right of residence comparable to the one enjoyed by refugees. The Immigration Office has declared that recognised stateless persons who can show they satisfy the two requirements set out by the Constitutional Court (1. involuntarily lost their nationality and 2. cannot obtain a legal and durable right of residence in another state) receive a residence permit of limited duration. The Court of Cassation has held that stateless persons who satisfy the two requirements set out by the Constitutional Court do not automatically fall under the category of foreigners authorised to stay by law nor are they automatically equated to a recognised refugee. They still need to be granted leave to remain. In practice recognised stateless persons thus still need to submit a request for humanitarian stay.</p> | <p>UNHCR, Mapping Statelessness in Belgium, para. 406, 437.</p> <p>Art. 10, 5° Arrêté royal portant exécution de la loi du 9 mai 2018 relative à l'occupation de ressortissants étrangers se trouvant dans une situation particulière de séjour</p> <p>Loi électorale communale, art. 1ter</p> <p>Art. 24 of the Belgian Constitution</p> <p>Law of 29 June 1983 on compulsory education</p> <p>Flemish decree on equal opportunities in education.</p> <p>Art. 3 Loi concernant le droit à l'intégration sociale jo. Art. 2 Arrêté royal portant règlement général en matière de droit à l'intégration sociale</p> <p>Art. 57 §2 Loi organique des centres publics d'action sociale</p> <p>UNHCR, Mapping Statelessness in Belgium, para. 440-441.</p> <p>V. LAUVAUX, « L'accès des apatrides à l'aide sociale », in F. ETIENNE et M. DUMONT (dir.), Regards croisés sur la sécurité sociale, Liège, Anthemis, coll. CUP, 2012, pp.708-729.</p> <p>Constitutional Court, 17 December 2009, No. 198/2009 (in French) Constitutional Court, 11 January 2012, No. 1/201 (in French)</p> <p>Senate hearing, 21 March 2016, p. 21</p> <p>Service public fédéral Intérieur - Office des Etrangers, Avis relatif à la proposition de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en vue de régler le droit de séjour des apatrides, DOC 54 3487/001 (déposée par Mme Nahima Lanjri, 1 March 2019, p. 2, unpublished)</p> <p>Court of Cassation, 27 June 2016, No. S.15.0004.N/1, B.M. v. Openbaar Centrum voor Maatschappelijk Welzijn van Roeslare (in Dutch)</p> <p>Proposition de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en vue de régler le droit de séjour des apatrides</p> <p>Art. 57 of the Consular Code (in French)</p> <p>Ministerial circular, 15 September 2017 (in Dutch)</p> <p>Art. 10 of the Immigration Law (in French)</p> <p>UNHCR, Mapping Statelessness in Belgium, para. 406.</p> <p>Art. 10, 5° Arrêté royal portant exécution de la loi du 9 mai 2018 relative à l'occupation de ressortissants étrangers se trouvant dans une situation particulière de séjour</p> |
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| | | | | <p>A legislative proposal was introduced in parliament to establish criteria and a procedure for granting a residence permit to recognised stateless persons in law. The proposal was only briefly discussed before dissolution of parliament in May 2019.</p> <p>The current government (in office since September 2020) announced its intention to address the issue of residence permits for stateless people and plans to grant a residence permit to stateless people who are unable to return to their country of origin for reasons beyond their control.</p> | <p>Art. 24 of the Belgian Constitution</p> <p>Law of 29 June 1983 on compulsory education</p> <p>Flemish decree on equal opportunities in education.</p> <p>UNHCR, Mapping Statelessness in Belgium, para. 437.</p> <p>Art. 3 Loi concernant le droit à l'intégration sociale jo. Art. 2 Arrêté royal portant règlement général en matière de droit à l'intégration sociale</p> <p>Art. 57 §2 Loi organique des centres publics d'action sociale</p> <p>UNHCR, Mapping Statelessness in Belgium, para. 440-441.</p> |
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Detention

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| DET.1.a | Immigration detention | Please provide a brief overview of whether immigration detention powers are provided for in law and applied in practice, and whether alternatives to detention are considered. Please provide the legal source(s) and, if available, refer to other publications and sources of information about the law, policy, and practice on immigration detention. | <p>ICCPR: Article 9</p> <p>ECHR: Article 5</p> <p>EU Return Directive: Article 15</p> <p>UNHCR, Handbook on Protection (2014): Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient.</p> <p>UN General Assembly (2009): Calls upon all States to adopt alternative measures to detention.</p> <p>HRC, Report of the Special Rapporteur (2012): The obligation to always consider alternatives before resorting to detention should be established by law.</p> <p>International Detention Coalition (2015): Immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.</p> | <p>The Immigration Act provides for detention of asylum seekers at the border and on the territory, as well as detention on the territory of people subject to an order to leave the territory.</p> <p>Detention of asylum seekers at the border is systematic.</p> <p>According to the Immigration Act, detention should only be used as a measure of last resort, but practice suggests otherwise.</p> <p>No systematic individual assessment is carried out within the framework of the principles of proportionality and necessity prior to detention or extension of detention.</p> <p>The Immigration Act specifies that alternatives to detention will be established by Royal Decree, but no such Decree has been adopted. Article 7 provides that a place of residence can be designated for the time necessary to carry out the measure. In practice, no alternatives are considered prior to detention.</p> <p>Families with minor children can be held in "return houses" before being detained in closed family units, but this is not a real alternative to detention.</p> | <p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, articles 7, 27, 74/5 and 74/6</p> <p>NANSEN Note 2018-1 Asile à la frontière et détention, Avril 2018</p> <p>AIDA, Country Report: Belgium, Update 2020</p> <p>Rapport alternatif de NANSEN asbl sur la mise en œuvre de la Convention contre la Torture et autres peines ou traitements cruels, inhumains ou dégradants en Belgique</p> <p>Conclusions et recommandations du Comité contre la torture, Observations finales, CAT/C/BEL/CO/4, 30 July 2021</p> <p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, art. 7 and 74/6</p> <p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, art. 7 and 74/9</p> <p>European Migration Network, The use of detention and alternatives to detention in the context of immigration policies in Belgium, 2014</p> <p>CIRE, Les alternatives à la détention des migrants, une réelle alternative?, 2020</p> |
| DET.1.b | | Does a proposed country of removal need to be identified before a person is detained for removal? Please describe the situation in law and in practice. | <p>ICCPR: Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment (Article 7).</p> <p>ECtHR, Auad v. Bulgaria (2011): In cases detention with a view to deportation, lack of clarity as to the destination country could hamper effective control of the authorities' diligence in handling the deportation.</p> <p>EU Return Directive: Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.</p> | In principle yes. But a practice has been developed according to which a person can be detained for removal based on an initial (temporary) order to leave the territory with a detention measure in which no country for removal has been identified (and no Article 3 ECHR test has been carried out.) When the person's nationality has been identified and the Art. 3 ECHR test has been carried out, a new order to leave the territory with detention measure is then delivered. The latter decision contains the actual 'removal decision' in which the country of removal is identified. | <p>Conseil du Contentieux des Étrangers/ Raad voor Vreemdelingenbetwistingen, 1 October 2018, nr. 210383</p> <p>Conseil du Contentieux des Étrangers, 24 December 2018, nr. 214610</p> |
| DET.1.c | | Is there a clear obligation on authorities to release a person when there is no reasonable prospect of removal? | <p>EU Return Directive: When it appears that a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned shall be released immediately.</p> <p>UN Working Group on Arbitrary Detention (2018): When the obstacle for identifying or removal of persons in an irregular situation from the territory is not attributable to them, the detainee must be released to avoid potentially indefinite detention from occurring, which would be arbitrary.</p> <p>ECtHR, Auad v. Bulgaria (2011)</p> | Yes. The Immigration Act provides that detention can only be extended if the necessary steps for removal have been taken within 7 days of the deprivation of liberty, if they are pursued with due diligence and if there is a reasonable prospect of removal within a reasonable time. | Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers , art. 7 |

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| | | | ECtHR, Mikolenko v. Estonia (2009) | | |
| DET.2.a | Identification of statelessness | Is statelessness juridically relevant in decisions to detain? Please describe how (risk of) statelessness is identified and whether referral to an SDP is possible from detention. | <p>ECtHR, Auad v. Bulgaria (2011) ECtHR, Mikolenko v. Estonia (2009): Detention may only be justified as long as deportation proceedings are being conducted with due diligence. UNHCR, Handbook on Protection (2014): Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. CMW, General comment No. 5 (2021): States should avoid detaining migrants who have specific needs, which includes stateless persons. States should also be aware that stateless persons find themselves in a vulnerable situation, given that consular assistance and protection are unavailable due to their status. Statelessness determination procedures are essential, given that the lack of a country of nationality to be returned to leaves stateless persons at higher risk of arbitrary and indefinite detention. Equal Rights Trust, Guidelines (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. ICJ, Migration and International Human Rights Law (2014): The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.</p> | <p>There is no dedicated mechanism in place to identify stateless persons or persons at risk of statelessness. In Belgium, at the border, routine detention of individuals seeking international protection including on the ground of statelessness is the rule. Statelessness could be relevant in decisions to extend detention, if there is no reasonable prospect of removal, but practice suggests otherwise.</p> <p>Referral to the judicial procedure to determine statelessness is possible in theory, but difficult in practice because of the long delays to obtain a court date. In addition, the judicial procedure has no suspensive effect, so the person could be removed before a decision is made.</p> | " Asile à la frontière et détention ", NANSEN Note 2018/1, avril 2018 |
| DET.2.b | | Is there a definition of vulnerability in law? If yes, does it explicitly include statelessness? If not, please note whether statelessness is considered to be a factor increasing vulnerability. | <p>PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): Statelessness should be explicitly included in the definition of vulnerability. Vulnerability should always be determined and assessed on an individual basis.</p> | Vulnerability is not defined in the law, which only lists different categories of vulnerable persons. Statelessness is not mentioned among those categories. | Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers , art. 1, 12° |
| DET.2.c | | Are individual vulnerability assessments carried out before a decision to detain (or soon after)? | <p>ENS, Protecting Stateless Persons From Arbitrary Detention (2015): Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed. EU Return Directive: Article 16(3) EU Return Handbook (2017): Attention should be paid to the specific situation of stateless persons. Council of the European Union, Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons (2013): European entities should assess the situation of LGBTI persons in detention. PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): There should be a clear legal obligation to screen and</p> | No, there is no mechanism in place to assess vulnerability prior to the detention decision. | <p>NANSEN, "Kwetsbaarheid in detentie: verkennende bevindingen"; 4 June 2019</p> <p>NANSEN, Vulnérabilités en détention. Motivation des titres de détention, November 2020</p> |

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| | | | assess individuals' vulnerability before a decision to detain is taken and before individuals are placed into situations of deprivation or restriction of liberty. | | |
| DET.2.d | | Are stateless people detained in practice? | As above. | Yes | Point of no return. The futile detention of unreturnable migrants ", January 2014, p. 26-28 |
| DET.3.a | Procedural safeguards | Are there adequate procedural safeguards in place for individuals in immigration detention (e.g. maximum period of detention, automatic release at the end, decisions in writing, regular periodic reviews, judicial oversight, legal aid, etc.)? | <p>ICCPR: Article 9(4) ECHR: Article 5(4) EU Return Directive: Articles 12, 13 and 15(5) HRC, Report of the Working Group on Arbitrary Detention (2010): A maximum period of detention must be established by law and upon expiry the detainee must be automatically released. CMW, General comment No. 5 (2021): States parties are obligated to adopt legislative and other measures, allocate adequate resources, and provide relevant training to comply with the CMW. There should be a maximum period for immigration detention established in legislation, with automatic release at the end of that period, and which precludes re-detention. States should also be aware that stateless persons find themselves in a vulnerable situation, given that consular assistance and protection are unavailable due to their status. UNHCR, Detention Guidelines (2012): To guard against arbitrariness, maximum periods of detention should be set in national law. UNHCR, Handbook on Protection (2014): Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. UNGA, Body of Principles (1988): Anyone who is arrested shall be informed at the time of the reason for his arrest. Equal Rights Trust, Guidelines (2012): Stateless detainees shall receive their order of detention in writing and in a language they understand. To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body independent of the detaining authorities. Detention should always be for the shortest time possible. International Commission of Jurists, Migration and International Human Rights Law: A Practitioners' Guide (2014): The authorities shall ensure that sufficient information is available to detained persons in a language they understand on the nature of their detention and reasons for it. ECtHR, Kim v. Russia (2014): The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> | <p>Yes. Detention is permitted for an initial period of 2 months that can be prolonged by 2 months when the necessary steps have been taken to remove the person within 7 working days after detention, when the steps are continued with due diligence and when removal is still possible within a reasonable period of time. The detention can be prolonged for another month by the Minister. The detention cannot exceed 5 months except in cases of public order or national security, detention cannot exceed 8 months. Release is automatic once the maximal period of detention has expired.</p> <p>There is no automatic, periodic review of detention before a court or independent body, unless the detention is prolonged to five months by the Minister, in which case the lawfulness of the extension must be reviewed by the court. Detainees have access to a court to challenge their detention, but a qualified lawyer is needed. Judicial review is limited to the lawfulness of detention (not the appropriateness) and the competent courts are not necessarily specialised in immigration law.</p> <p>The Belgian Government in office since September 2020 plans to transfer the competence of reviewing detention decisions from the judiciary to the Conseil du Contentieux des Étrangers (CCE) and to allow the court to examine the appropriateness of detention.</p> <p>The Royal Decree on the functioning of the closed centres states that the director of the closed centre should inform the detainee of the possibility to appeal the detention decision. The Royal Decree on access to the territory, stay, establishment and removal of foreigners determines the decision and form that should be delivered to the foreigner in case of detention with purpose of removal. In practice individuals receive a written decision informing them of the reasons of their detention. Sometimes, in cases of prolongation of detention, this decision is delivered belatedly.</p> <p>Free legal aid is available for detained people, both at first instance and on appeal. There is a presumption of insufficient means of subsistence.</p> | <p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, art. 7</p> <p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, art. 71-74</p> <p>Report by Nils Muiznieks, Commissioner for Human Rights of the Council of following his visit to Belgium from 14 to 18 September 2015, 28 January 2016, §30</p> <p>UNHCR, Accompagnement juridique des demandeurs de protection internationale en Belgique, September 2019</p> <p>General policy note (asylum and migration), 4 November 2020</p> <p>Royal Decree 2 August 2002, art. 17.</p> <p>Royal Decree 10 October 1981, art. 110ter decies</p> <p>Judicial Code, Art. 508/13/1</p> |

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| DET.3.b | | Are detainees provided with information on their rights, contact details of legal advice and support providers, and guidance on how to access an SDP? | Equal Rights Trust, Guidelines (2012) : Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees. | Yes. Information leaflets are available in detention centres. Information is also provided during the intake upon arrival in the closed centre. In practice this is not effective due to lack of use of interpreters. No specific information is provided on statelessness determination. | Royal Decree 2-08-2002, art. 17 -ENNHRI, " Migrant's access to information on their rights ", 2017, p. 14 |
| DET.3.c | | Are there guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality for the purpose of removal? | Equal Rights Trust, Guidelines (2012) : The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation. ENS, Protecting Stateless Persons From Arbitrary Detention (2015) : The detaining state should have rules in place that govern the process of re-documentation and/ or ascertaining entitlement to nationality. | There are no general guidelines in place. The process of re-documentation and ascertaining entitlement to nationality is ad hoc, based on practices of the relevant consular authorities. The Government in office since 2020 plans to make identification and return procedures more efficient and to limit the duration of detention. | Office des Étrangers, Circulaire relative à l'identification d'étrangers en séjour irrégulier, 2009 Myria, Retour, détention et éloignement des étrangers en Belgique, un retour à quel prix? , 2017, p. 64. EMN, The effectiveness of return in Belgium, challenges and good practices linked to EU rules and standards , 2018, p. 23 General policy note (asylum and migration), 4 November 2020 |
| DET.4.a | Protections on release | Are people released from detention issued with identification documents (including confirmation of their statelessness status) and protected from re-detention? | 1954 Convention : Article 27 UNHCR, Handbook on Protection (2014) : Being undocumented cannot be used as a general justification for detention. CMW, General comment No. 5 (2021) : There should be a maximum period for immigration detention established in legislation, with automatic release at the end of that period, and which precludes re-detention. Statelessness determination procedures are essential, given that the lack of a country of nationality to be returned to leaves stateless persons at higher risk of arbitrary and indefinite detention. Detaining stateless persons when there is no real prospect of removal would render the detention arbitrary, and the detained stateless person must therefore be immediately released. ENS, Protecting Stateless Persons From Arbitrary Detention (2015) : State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention. Equal Rights Trust, Guidelines (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation. | No. However, the new Government has pledged to improve the identification procedure (to determine a person's nationality/identity for the purposes of removal/return), to limit the duration of detention and to avoid detention where it is not followed by effective removal. It also plans to make the use of detention more proportionate. | "Point of no return. The futile detention of unreturnable migrants" , January 2014, p. 26-28 General policy note (asylum and migration), 4 November 2020 |
| DET.4.b | | If the purpose of detention cannot be fulfilled and the person is released, what legal status and rights are provided to them in law? | CJEU, Kadzoev, C-357/09 PPU (2009) : After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release. Equal Rights Trust, Guidelines (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation. | The person is released with an order to leave the territory. No legal status is provided and as an undocumented migrant, they are entitled to no rights except for urgent medical care. | For a complete overview of access to medical care according to the right to stay in Belgium see Medimmigrant, Droit de séjour et soins médicaux , 2019 For an overview of the Urgent Medical Care mechanism see Loi organique des CPAS , 8 July 1976, art.. 57 of the |
| DET.5.a | Return and readmission agreements | Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements? | UNHCR, Handbook on Protection (2014) : Efforts to secure | Belgium has entered into readmission agreements as an EU MS, a BENELUX MS, and as a self-standing State. There is generally a clause addressing stateless people in European agreements but not necessarily in Benelux agreements. This will depend on the | Liste des accords dont la Belgique est dépositaire |

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| | | | <p>admission or readmission may be justified but these need to take place subsequent to a determination of statelessness. UNCRC, MKAH v Switzerland, no 95/2019 (2021): The State in which a stateless child applies for international protection has an obligation under Article 7 CRC to consider whether, if the child was returned to another country, their right to a nationality would be fulfilled (as well as other rights under the CRC).</p> | <p>situation of the country's nationals. For example, it was important for the agreement with Kazakhstan. For the agreement with Kosovo too, there are persons declared stateless in Belgium, but for the Kosovar authorities, they are not stateless.</p> <p>Belgium also makes regular use of readmission MoU's that are not public: the Belgian MoUs and their European equivalents have different names (mostly "declarations"). At the European level, these are generally short (1-2 pages) and concise texts. At the Belgian level on the other hand, they are quite comprehensive. These documents are negotiated between 2 administrations or ministries and have no legal value - every party can withdraw from it whenever they want. The Belgian Immigration Office rejected a request for consultation, made under Article 6, §1, 3° of the Law of 11 April 1994 on the publicity of administrative acts. There is no systematic provision on stateless people in the non-public MoU's. The readmission agreement with Romania dates from before their accession to the EU. In this agreement, persons who have lost their Romanian nationality are also included. Romania has provided that persons who have lost their nationality may request to recover it. If, for example, a person has had Romanian nationality once and then became stateless in Belgium, it is not impossible that they may be able to regain their original nationality.</p> <p>According to article 74/13 of the Immigration Act, when making a removal decision, the Minister shall take into account the best interest of the child, but there is no information on whether this is applied with regards to the right to a nationality.</p> | <p>EU readmission agreements: https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en.</p> <p>BENELUX readmission agreements (published in the Belgian Official Journal and available on request at the BENELUX secretariat): http://www.benelux.int/fr/benelux-unie/introduction</p> <p>Belgian Contact Point of the European Migration Network (EMN), Good Practices in the return and reintegration of irregular migrants: Belgium's entry bans policy & use of readmission agreements, June 2014</p> <p>Myria, Retour, détention et éloignement des étrangers en Belgique, un retour à quel prix?, 2017, p. 63-65.</p> <p>Response to parliamentary question</p> <p>EMN, The effectiveness of return in Belgium, challenges and good practices linked to EU rules and standards, 2018</p> <p>Information provided to NANSEN by the Belgian Immigration Office</p> <p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, art. 74/13</p> |
| DET.5.b | | Are you aware of cases of stateless people being returned under such agreements? | | No | |

Prevention and Reduction

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| PRS.1.a | Naturalisation | In what timeframe do stateless people who are residing on the territory acquire the right to apply for naturalisation, and how does this compare to others with a foreign nationality? | 1954 Convention : Article 32 UNHCR, Good Practices Papers – Action 6 (2020) : It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. CoE Committee of Ministers, Recommendation No. R (99) 18 (1999) : Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. ENS (2013) : The main benchmark is if there is any preferential treatment for stateless people compared to the general rules applied to those with a foreign nationality. | Stateless people can apply for naturalisation through Parliament after two years of legal residence if their right of residence is of unlimited duration. There is no legal provision organising the transition between the humanitarian residence permit (one year, renewable) and any residence for an unlimited duration. Only changing from humanitarian to another status (e.g. family reunification, refugee status etc.) will allow stateless people access to residence of unlimited duration. In theory, after renewing a one-year humanitarian permit five times, a stateless person could apply for unlimited residence and naturalisation, but there are no criteria set in law/policy for a one-year permit to be transferred to unlimited stay. In the facilitated parliamentary procedure, residence is the only requirement, but in practice, language and integration requirements are applied at the discretion of the competent parliamentary commission. As most statuses only foresee a right of residence of unlimited duration after five years, the facilitated regime is hardly ever applied. Stateless people can also apply for nationality through the regular procedure, after five years of legal residence and if their right of residence is of unlimited duration. Stateless persons (like other foreigners) will have to prove economic and social integration as well as knowledge of one of Belgium's national languages. There is a fee of 150 EUR per request that applies to adults equally, including when they are stateless. | Art. 19 §2 of the Belgian Nationality Code Art. 12bis of the Belgian Nationality Code Service fédéral finances See Myria, Devenir Belge, procédures d'acquisition de la nationalité , 2016 |
| PRS.1.b | | Are there requirements relating to 'good character' or previous criminal convictions that could prevent some stateless people from naturalising? If yes, please describe. | CoE Committee of Ministers, Recommendation No. R (99) 18 (1999) : States should ensure that offences, when relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a state. | Access to nationality can be refused on account of "reprehensible behaviour". The concept of "reprehensible behaviour" is ill-defined and, in practice, applied broadly. | Art. 15, §3 of the Belgian Nationality Code Art. 1, §2, 4° of the Belgian Nationality Code Art. 2 of the Royal Decree implementing the Belgian Nationality Code MYRIA, La migration en chiffres et en droit. Les cahiers du rapport annuel. Nationalité, 2020. |
| PRS.1.c | | Are there exemptions for stateless people from any nationality or integration test, language, income or fee requirements for naturalisation? Please describe the requirements and cost of the procedure for stateless adults and children, and any direct or indirect barriers to naturalisation caused by discriminatory laws, policies, or practices. | 1954 Convention : Article 32 UNHCR, Good Practices Papers – Action 6 (2020) : It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. CoE Committee of Ministers, Recommendation No. R (99) 18 (1999) : Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. UNHCR, Background Note on Discrimination in Nationality Laws and Statelessness (2021) : States should remove or amend discriminatory legal provisions, rules, policies, or practices that directly or indirectly act as barriers to naturalisation. | Unless they can benefit from the facilitated naturalisation procedure mentioned under PRS.1.a, there are no such exemptions for adult stateless people. Belgian nationality is attributed to minor children of stateless people who reside in Belgium who acquire Belgian nationality, without integration, income or language requirements. There is an application fee of 150 EUR for naturalisation. Minor children and those who apply to reacquire Belgian nationality are exempt from the fee. | Art. 19 §2 of the Belgian Nationality Code Art. 12 of the Belgian Nationality Code ADDE, fiche pratique nationalité SPF Finances, Payer une demande de nationalité |
| PRS.2.a | Stateless born on territory | Is there a provision in law for stateless children born on the territory to acquire nationality? [If yes, continue to PRS2b. If no, proceed to PRS2i] | 1961 Convention : Article 1 ECN : Article 2 CRC : Article 7 Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. HRC, CCPR General comment No. 17 (1989) : States are required to adopt every appropriate measure, both internally and in cooperation with other | Yes. Article 10 al. 1 of the BNC provides that a child born in Belgium is Belgian if they would otherwise have no other nationality at any moment before they reach the age of 18 or are "emancipated" (a minor older than 15 years old for whom the consequences of the minority (incapacity to act and parental authority) are partially lifted)). Article 10 al. 4 of the BNC specifies that such Belgian nationality acquired will only be lost upon acquisition of another nationality before the child is 18 or "emancipated". | Art. 10 of the Belgian Nationality Code Loi du 6 décembre 2022 visant à rendre la justice plus humaine, plus rapide et plus ferme Circulaire relative aux modifications du Code de la nationalité belge introduites par la loi du 27 décembre 2006 portant des dispositions diverses , 25 May 2007 UNHCR, Mapping Statelessness in Belgium , para 506 |

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| | | | States, to ensure that every child has a nationality when he is born. European Parliament resolution (2018) : The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC. | | EMN Ad-Hoc Query on Joint ad-hoc query COM & LU EMN NCP on statelessness: minors born in exile and unaccompanied minors (part 2) , |
| PRS.2.b | | Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)? | UNHCR, Guidelines on Statelessness No. 4 (2012) : The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application. ENS, No Child Should Be Stateless (2015) : The 1961 Convention and the European Convention on Nationality oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth. | The provision for otherwise stateless children to acquire nationality is automatic (by operation of the law). However, Art. 4 BNC provides that proof of Belgian nationality is provided by proving that the conditions and formal requirements imposed by Belgian law have been met. In practice the burden of proof lies with the applicant's legal representative(s). Article 10 al.1 was recently amended and now provides that the child's legal representative must give all the relevant document to the civil registrar. In case of doubt about the child's lack of nationality, the law now provides that the civil registrar must seek the opinion of the King's prosecutor. | Art. 10, al 1 of the Belgian Nationality Code Loi du 6 décembre 2022 visant à rendre la justice plus humaine, plus rapide et plus ferme |
| PRS.2.c | | Are parents provided with information about their child's nationality rights and relevant procedures, including where the child would otherwise be stateless or has undetermined nationality? | UNHCR, Guidelines on Statelessness No. 4 (2012) : Contracting States are obliged to provide detailed information to parents of children who would otherwise be stateless or of undetermined nationality about the possibility of acquiring the nationality, how to apply and about the conditions which must be fulfilled. If the child concerned can acquire the nationality of a parent immediately after birth, States that opt to not grant nationality to children in these circumstances must assist parents in initiating the relevant procedure with the authorities of their State or States of nationality. | No. | |
| PRS.2.d | | Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality? | UNHCR, Guidelines on Statelessness No. 4 (2012) : The test is not an inquiry into whether a child's parents are stateless. ENS, No Child Should Be Stateless (2015) : Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on. | No. | |
| PRS.2.e | | Are stateless children required to prove they cannot access another nationality to acquire the nationality of the country of birth? If yes, please describe how this is determined in practice. | UNHCR, Guidelines on Statelessness No. 4 (2012) : A Contracting State cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless based on its own interpretation of another State's nationality laws. The burden of proof must be shared between the claimant and the authorities, but in the case of children the State assumes a greater share of the burden of proof. Decision-makers must consider Articles 3 & 7 CRC and adopt an appropriate standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected. | Art. 10 al. 2 BNC stipulates that the child will not be Belgian if they can obtain another nationality by their parent(s) or legal guardian(s) initiating administrative measures before the diplomatic or consular authorities of the country of either parent. The Constitutional Court upheld art. 10 al. 2, but made two clarifications: 1. The Court emphasised that it must be deduced from art. 10 al. 2 that the child must have the <i>right</i> to acquire the other nationality and that this would be endangered should such an acquisition be subject to discretionary application by the authorities representing the foreign state. 2. The Court noted that art. 10 al. 2 constitutes an exception to the rule and must for this reason be restrictively interpreted. It held that this provision would not apply if the parents found themselves unable to apply to the diplomatic | Art. 10, al 2 of the Belgian Nationality Code UNHCR, Mapping Statelessness in Belgium , para 507 Constitutional Court, 24 April 2008, No. 73/2008 1. Constitutional Court, 24 April 2008, para. B.8.4. UNHCR, Mapping Statelessness in Belgium , para. 561 2. Constitutional Court, 24 April 2008, para. B.8.5 UNHCR, Mapping Statelessness in Belgium , para. 562 |

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| | | | | <p>or consular authorities of their country of origin, as is notably the case for parents recognised as refugees</p> <p>The Circular from the Minister of Justice of 25 May 2007 on the application of the modified Article 10 gives examples of situations where it would be impossible for parents to take the necessary measures for their child to obtain a nationality. These include parents who have sought asylum whose procedure is ongoing and parents who have been recognised as refugees or granted subsidiary protection. Formerly registered asylum seekers whose applications have been rejected, will not be exempted from the administrative steps to have their child recognised by the representative authorities of their country, unless the time limit for registration has lapsed, in which case the child will be granted Belgian nationality.</p> <p>The authority responsible for assessing whether a child born in Belgium would be stateless if they do not acquire Belgian nationality is the civil registrar of the municipality of the parents' place of habitual residence. In practice the civil registrar will often seek advice from the Nationality Service of the Ministry of Justice, which has an advisory role regarding the interpretation and application of the BNC. If advice is requested in writing, the Nationality Service will provide individualised advice. The Nationality Service has also published standard responses to recurring questions on an online platform available to civil registrars. According to the Nationality Service and Civil Registrars in principle the burden of proof lies with the applicant. In practice the approach is often more collaborative, in that the Nationality Service (in its advice) or the Civil Registrars will detail any additional elements of proof that might be required. In exceptional cases the Nationality Service will make enquiries with consular authorities.</p> | <p>Circulaire relative aux modifications du Code de la nationalité belge introduites par la loi du 27 décembre 2006 portant des dispositions diverses, 25 May 2007</p> <p>UNHCR, Mapping Statelessness in Belgium, para 563</p> <p>UNHCR, Mapping Statelessness in Belgium, para. 511</p> <p>Information obtained from the Nationality Service of the Ministry of Justice</p> <p>UNHCR, Mapping Statelessness in Belgium, para. 512 -513</p> <p>Information obtained from the Nationality Service of the Ministry of Justice</p> |
| PRS.2.f | Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, please specify length and if this must be legal residence. | <p>1961 Convention: Article 1(2)</p> <p>UNHCR, Guidelines on Statelessness No. 4 (2012): States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten years in all.</p> <p>CRC: Articles 3 & 7</p> <p>Committee on the Rights of the Child, Concluding observations on the Netherlands (2015): Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions.</p> <p>ECN: Article 6(2)(b)</p> | There is no requirement to fulfil a period of residence. | <p>Art. 10 of the Belgian Nationality Code</p> <p>Objectif asbl, "Attribution de la nationalité belge aux apatrides nés en Belgique (art.10)"</p> | |
| PRS.2.g | Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If yes, please specify length and if this must be legal residence. | <p>Committee on the Rights of the Child, Concluding observations on Czech Republic (2011): The outcome of an application by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State.</p> | There is no requirement for the parents to fulfil a period of residence. | Art. 10 of the Belgian Nationality Code | |

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| | | | ENS, No Child Should Be Stateless (2015) : Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention. | | |
| PRS.2.h | | What are the age limits and fees (if any) for making an application for nationality for a stateless person born on the territory? | 1961 Convention : Article 1(2) UNHCR, Guidelines on Statelessness No. 4 (2012) : Contracting States need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21. Where Contracting States grant nationality to individuals who would otherwise be stateless upon application, they are encouraged to accept such applications free of charge. ENS, No Child Should Be Stateless (2015) : Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child. | The BNC does not stipulate any age limits. A child born in Belgium is Belgian <i>ex lege</i> if they would otherwise be stateless at any moment before they reach the age of 18 or are “emancipated”. As long as it can be established that the child would have been stateless before the age of 18, there is no reason not to apply the safeguard after the age of 18. Application in practice is however unknown. No federal fee applies for minor children. Some municipalities however request the payment of an administrative fee. | Art. 10 of the Belgian Nationality Code SPF Finances, Payer une demande de nationalité City of Antwerp City of Brussels City of Liège |
| PRS.2.i | | Are there specific provisions to protect the right to a nationality of children born to refugees? | UNHCR, Guidelines on Statelessness No. 4 (2012) : Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities. | The Belgian Constitutional Court emphasised that art. 10 al. 2 constitutes an exception to the rule and must for this reason be restrictively interpreted. It held that this provision would not apply if the parents found themselves unable to apply to the diplomatic or consular authorities of their country of origin, as is notably the case for parents recognised as refugees. The Circular from the Minister of Justice of 25 May 2007 on the application of the modified Article 10 gives examples of situations where it would be impossible for parents to take the necessary measures for their child to obtain a nationality. These include parents who have sought asylum whose procedure is ongoing and parents who have been recognised as refugees or granted subsidiary protection. Formerly registered asylum seekers whose application have been rejected, will not be exempted from the administrative steps to have their child recognised by the representative authorities of their country, unless the time limit for registration has lapsed, in which case the child will be granted Belgian nationality. | Constitutional Court, 24 April 2008, No. 73/2008 , para. B.8.5 UNHCR, Mapping Statelessness in Belgium , para. 562 Circulaire relative aux modifications du Code de la nationalité belge introduites par la loi du 27 décembre 2006 portant des dispositions diverses , 25 May 2007 UNHCR, Mapping Statelessness in Belgium , para 563 European Migration Network, Ad hoc Query on the consequences of the Zambrano case (C-34/09) , 2011 |
| PRS.3.a | Foundlings | Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure. | 1961 Convention : Article 2 ECN : Article 6(1)(b) | Article 10 al. 3 of the BNC provides that a new-born child found in Belgium is presumed to be born in Belgium, until proven otherwise. Therefore, the safeguard provided in art. 10 al. 1 BNC will be applied to such children if they would otherwise be stateless. | Art. 10 al. 3 of the Belgian Nationality Code |
| PRS.3.b | | Is there an age limit (e.g. ‘new-born’ or ‘infant’) in law or practice specifying when a foundling would qualify for nationality? | UNHCR, Guidelines on Statelessness No. 4 (2012) : At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth. | In its declaration concerning Article 2 of the 1961 Convention, the Belgian Government declared that, for Belgium, the category of “foundlings” concerns found children who are believed to be new-born. There is no readily available information on how this is implemented in practice. | United Nations Treaty Collection HCR, Commentaires du Haut Commissariat des Nations Unies pour les réfugiés relatifs à la proposition de loi 0476/010 du 22 juin 2011 modifiant le Code de la nationalité belge afin de rendre l’acquisition de la nationalité belge neutre du point de vue de l’immigration, Amendement N° 124 de Mme Van Cauter et consorts , 4 August 2011, p. 9. |
| PRS.3.c | | Can nationality be withdrawn from foundlings if this leads to statelessness? | UNHCR, Guidelines on Statelessness No. 4 (2012) : Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality. | Nationality can only be withdrawn from foundlings upon acquisition of another nationality before the child is 18 or “emancipated”. | Art. 10, al.4 of the Belgian Nationality Code |

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| PRS.4.a | Adoption | Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is acquired? | 1961 Convention : Article 5 ENS, No Child Should Be Stateless (2015) : Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child's country of origin. | A minor who is adopted by national(s) of another country and acquires or already possesses nationality of that country loses Belgian nationality. There could be a risk of statelessness in the procedure, but no information is available on how this operates in practice. Nationality is not lost if one of the adoptive parents is a Belgian national, or if the parent married to the adoptive parent who is a national of another country, is a Belgian national. | Art. 22, §1er, 4° of the Belgian Nationality Code EUDO, Belgium : modes of protection against statelessness, 2013 |
| PRS.4.b | | Does a foreign child adopted by national parents acquire nationality? Please specify any age limits and/or risk of statelessness during the adoption process. | ECN : Article 6(4)(d) Committee on the Rights of the Child, Concluding Observations on Switzerland (2015) : Ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption. | A foreign child under the age of 18 adopted by national parents acquires nationality the day the adoption takes effect. This is automatic if either the child or one of the adoptive parents were born in Belgium, or if the child has not acquired the nationality of any other country (safeguard against statelessness). It is by declaration if neither the child nor the parent was born in Belgium, in which case, the parent must make a declaration within five years after the adoption takes effect and before the child reaches the age of 18. | Art. 9 of the Belgian Nationality Code EUDO, Belgium : modes of protection against statelessness, 2013 |
| PRS.5.a | Ius sanguinis | Can children born to nationals abroad acquire nationality by descent (<i>ius sanguinis</i>) in general and/or if they would otherwise be stateless? | 1961 Convention : Article 4 UNHCR, Guidelines on Statelessness No. 4 (2012) : Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth responsibility falls to the Contracting State of the parents to grant its nationality to the child. | Children born to nationals abroad acquire nationality by descent automatically if at least one parent is a national and born in the country, or if the child has not acquired nationality of any other country (safeguard against statelessness). Nationality is acquired upon declaration if none of the parents were born in Belgium, in which case, the parent has to make a declaration within five years after the birth of the child. | Art. 8 of the Belgian Nationality Code EUDO, Belgium : modes of protection against statelessness, 2013 |
| PRS.5.b | | Are there any discriminatory conditions in law and/or practice for the acquisition of nationality by descent (e.g. differential treatment of children born out of wedlock, rights of father/mother/same-sex parents to confer nationality, etc.)? | ECTHR, Genovese v. Malta (2011) : The state must ensure that the right to nationality is secured without discrimination. CEDAW, Gen. Rec. 32 (2014) : Requires States parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed. UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 4 | There are no discriminatory conditions in law and/or practice for the acquisition of nationality by descent. | |
| PRS.6.a | Birth registration | Does the law provide that all children are registered immediately upon birth regardless of the migration or residence status, sexual and/or gender identity of their parents? | CRC : Article 7 ICCPR : Article 24(2) CoE, Recommendation CM/Rec(2009)13 (2009) : Member states should register the birth of all children born on their territory even if they are born to a foreign parent with an irregular immigration status or the parents are unknown. UNHCR, Guidelines on Statelessness No. 4 (2012) : Article 7 CRC applies irrespective of the nationality, statelessness or residence status of the parents. UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 7 UN Sustainable Development Goal 16.9 European Parliament, Resolution on LGBTIQ rights in the EU (2021) : Calls on States to overcome discrimination against rainbow persons and families. UNHCR and UNICEF, Background Note on Sex Discrimination in Birth Registration (2021) : All parents regardless of their sex should have equal rights to register the births of their children without discrimination. Laws or regulations that provide that | The law provides that a birth certificate is issued by the civil registrar of the municipality of birth within 15 days after birth, regardless of the legal status and/or documentation of the parent but only on request by the parents. All birth certificates are kept in the civil status register . Registration in the National Registry is done by the municipality of residence of the parents. This is only possible if at least one of the parents has legal residence status. In the absence of any registration in the National Registry the child is effectively undocumented (with limited access to healthcare, schooling etc). Note the difference between the civil status register (containing civil status records such as birth, marriage, death) and the National Registry (registering all Belgian nationals and foreigners with legal residence status). Same sex marriage and adoption by same sex couples are legal. In addition, co-maternity is regulated by law. Both parents can be listed on the birth certificate. However, difficulties may arise in case of surrogacy agreement (see hereunder, PRS.6.e). | Art. 42-49 of the Belgian Civil Code Art. 42-49, 143 and 325/2 and following of the Belgian Civil Code |

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| | | | only opposite sex parents may register the birth of children should be reformed. | | |
| PRS.6.b | | Are all children issued with birth certificates upon registration? If no, please describe legal status of documentation issued. | HRC, Resolution A/HRC/RES/20/4 (2012) : Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members. Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : Take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. | The law provides that a birth certificate is issued by the civil registrar of the municipality of birth within 15 days after birth, but only on request by the parents. | Art. 42-49 of the Belgian Civil Code |
| PRS.6.c | | Is the child's nationality determined or recorded upon birth registration? If yes, please describe how and by whom (e.g. if the mother/father's nationality is recorded and/or automatically attributed to the child, if there's a formal procedure, if information on both parents is recorded etc.) | CRC : Articles 3 & 7 | The child's nationality is not recorded upon birth registration. The child's nationality should be determined upon birth registration in order to resolve questions of private international law (such as filiation and name). In practice this is not always possible, in which case Belgian law is applied. | Art. 44 of the Belgian Civil Code Information obtained from the president of the Flemish Association for Civil Registrars (Vlavabs) |
| PRS.6.d | | If a child's nationality is not determined or recorded upon birth registration, is there a legal framework to determine the child's nationality later? If yes, please describe the procedure, including the legal grounds, deadlines, competent authority, and whether the child's best interests are taken into consideration. | CRC : Articles 3 & 7 1961 Convention : Articles 1 & 4 UNHCR, Guidelines on Statelessness No. 4 (2012) : States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child's status of undetermined nationality. Such a period should not exceed five years. HRC, CCPR General comment No. 17 (1989) : States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. UNHCR, Best Interests Procedure Guidelines (2021) HRC, D.Z. v. Netherlands (2021) | For the subsequent registration in the National Registry, nationality will be recorded. Registration in the National Registry is only possible if at least one of the parents has legal residence status or if the child can obtain legal residence on its own. The competent authority is the municipality of residence of the parents. In case the parents are registered asylum seekers the competent authority is the Immigration Office. Nationality is only registered on the basis of a national passport or a certificate of nationality. If nationality cannot be determined this will be registered as "undetermined nationality". Children's best interests are not consistently considered and practice varies among different municipalities, as there is no centralised guidance available. | Art. 1 Arrêté royal déterminant les informations mentionnées dans les registres de la population et dans le registre des étrangers. Art. 1 Loi du 19 juillet 1991 relative aux registres de la population, aux cartes d'identité, aux cartes des étrangers et aux documents de séjour Art. 1bis Art. 1 Loi du 19 juillet 1991 relative aux registres de la population, aux cartes d'identité, aux cartes des étrangers et aux documents de séjour |
| PRS.6.e | | Are there credible reports to suggest that, in practice, children are prevented from registering their birth (or their birth certificate issued abroad is not recognised) because of parents' migration or residence status, sexual and/or gender identity, because they were born as a result of a surrogacy agreement, or other reasons (please specify)? | Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed. Global Compact for Safe, Orderly and Regular Migration : States will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons to civil and birth registration. Global Compact on Refugees : States commit to fulfil the right of all individuals to a legal identity and ensure that migrants are issued documentation and civil registry documents. European Parliament Resolution (2018) : Calls on Member States to take immediate corrective measures to stop discriminatory birth registration. European Parliament, Resolution on LGBTIQ rights in the EU (2021) : Emphasises the importance of the recognition of birth certificates in all EU Member States regardless of the sex of the parents. | There are reports of children not being registered or whose foreign birth certificates are not recognised for reasons related to the conditions of their birth or their mode of procreation. A birth certificate will always be delivered if a child is born on the Belgian territory, but the certificate may not mention the correct parent-child relationship. To register a foreign birth certificate, the authorities may request an excessive number of documents even if these are not required by law. Children born through surrogacy have faced difficulties in registering their birth as the authorities consider that the Belgian public order is violated, leaving the child without parentage, registration, or even stateless. There have been recent positive developments in some municipalities, albeit this is limited and varies across different regions. There are also reports of challenges in registering children in the National Registry, even when they have a birth certificate, if there are suspicions about a fraudulent acknowledgment of paternity. This could result in the child being stateless or at risk of statelessness if the mother cannot pass on her nationality. There are further difficulties for children born in Belgium from parents with a residence permit, but when parentage is established later. In these cases, the Immigration office does not | NANSEN and Altea Lawyers (https://www.altea.be) |

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| | | | UNHCR and UNICEF, Background Note on Sex Discrimination in Birth Registration (2021) : All parents regardless of their sex should have equal rights to register the births of their children without discrimination. Laws or regulations that provide that only opposite sex parents may register the birth of children should be reformed. Court of Justice of the European Union, V.M.A. v Bulgaria, Case C-490/20 (2021) : Domestic authorities of an EU Member State are required to issue a birth certificate and identity documents to a child who is a national of that state and was born in another EU Member State, including when the birth certificate contains two parents of the same sex. | automatically grant the child the same residence status as their parents and may ask them to apply for family reunification. | |
| PRS.6.f | | Are there mandatory reporting requirements that would deter undocumented parents from coming forward to register their children (e.g. health or civil registry authorities required to report undocumented migrants)? If not, is there a clear firewall to prohibit the sharing of information by other entities with immigration authorities? | Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC and Joint General Comment No. 3 (2017) CMW and No. 22 (2017) CRC : Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Children's personal data, in particular biometric data, should only be used for child protection purposes. CoE, ECRI General Policy Recommendation No. 16(2016) : States should clearly prohibit the sharing of information about migrants suspected of irregular presence with immigration authorities. These firewalls must be binding on state authorities and the private sector. | Yes, there are mandatory reporting requirements. Public servants, including civil registrars, are required to report undocumented migrants to the immigration authorities. No clear firewall has ever been built by the Belgian authorities in this regard. | Art. 29 Belgian Penal Code |
| PRS.6.g | | Is there a statutory deadline for birth registration? If yes, please state the deadline and whether late birth registration is possible in law and practice. | Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration. HRC, Resolution A/HRC/RES/20/4 (2012) : Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child. | Notification of the birth is done no later than the first working day after the birth by the hospital where the birth took place, or if the birth took place outside a hospital, the doctor, midwife or any other witness. Registration of birth has to be done within 15 days after birth by the parents. If the parents don't register the birth within this timeframe the civil registrar will draw up the birth certificate based on the information provided in the notification of birth. | Art. 42 of the Belgian Civil Code Art. 43 of the Belgian Civil Code |
| PRS.6.h | | Are there additional requirements for late birth registration (e.g. fees, documents, court procedure)? Please describe the procedure including the competent authority and procedural deadlines. | As above | If the parents don't register the birth within fifteen days, the civil registrar will draw up the birth certificate <i>ex officio</i> based on the information provided in the notification of birth. Thus, lack of birth registration within fifteen days could only occur if there were no witnesses to the birth and no notification of birth was done. In this exceptional case a judgment to replace the birth certificate could be requested at the family court, during which process a court fee and lawyers' fees would apply. | Art. 35 of the Belgian Civil Code |
| PRS.7.a | Reducing <i>in situ</i> statelessness | Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details. | UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 7 | Not aware of any such programmes. | NANSEN |
| PRS.7.b | | Are there particular sections of the population - such as minority groups or people affected by conflict - believed | 1961 Convention : Article 9 UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 4 | Among the population arriving in Belgium over the last years several groups are believed to be stateless/at risk of statelessness, notably: | Justine Raymond, " Childhood Statelessness Prevention in the Migratory Context: The Experience of Syrian Asylum Seekers in Belgium ", Statelessness Working Paper Series |

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| | | to be stateless/at risk of statelessness? Please provide details and source of information. | HRC, Recommendations of the Forum on Minority Issues (2019) : States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities. | - Palestinians - Kurds - Bidoons from Kuwait - Persons at Risk of Statelessness due to difficulties in proving filiation or due to gender-discriminatory nationality laws. | No. 2017/04. |
| PRS.7.c | | Has the State implemented any other measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal of treaty reservations, reform of discriminatory laws, etc.) | 1961 Convention UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Actions 1 & 8 UNHCR, Good Practices Paper - Action 1 (2022) : States generally address and resolve situations of statelessness through law and policy reform enabling stateless persons to acquire nationality automatically by operation of law, through a simple registration process, or through naturalisation. Non-automatic procedures are generally a less effective way to resolve statelessness because they require the person concerned to take certain steps to acquire nationality. | No. | |
| PRS.8.a | Deprivation of nationality | Are there any provisions on deprivation of nationality that could render a person stateless? Please state whether there is a safeguard against statelessness established in law and on what grounds deprivation of nationality may result in statelessness (e.g. national security, fraud, etc.). | 1961 Convention : Article 8 & 9 ECN : Article 7(3) UDHR : Article 15(2) Principles on Deprivation of Nationality and the Draft Commentary : Principle 2.2: Deprivation of nationality refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual; Principles 4, 5 & 6 HRC, Report of the Secretary-General on Human Rights and Arbitrary Deprivation of Nationality (2009) : para. 23 UNHCR Guidelines on Statelessness No.5 (2020) : the prohibition of arbitrary deprivation of nationality also includes situations where there is no formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a particular individual/group as national(s) (e.g. where authorities persistently refuse to issue or renew documents without providing an explanation or justification). ILEC Guidelines (2015) : Deprivation of nationality must have a firm legal basis, should not be interpreted extensively or applied by analogy and deprivation-provisions must be predictable. | There is a safeguard against statelessness in all cases of loss of nationality provided for in the law, and in most cases of deprivation, except for where nationality was acquired by fraud. In this case, even if the person does not have another nationality, deprivation of nationality will be ordered after the expiration of a reasonable period determined by the Court to allow the person to try and recover their original nationality. | Art. 22 §1-2 of the Belgian Nationality Code Art. 23, 23/1 and 23/2 BNC HCR, Commentaires du Haut Commissariat des Nations Unies pour les réfugiés relatifs à la proposition de loi 0476/010 du 22 juin 2011 modifiant le Code de la nationalité belge afin de rendre l'acquisition de la nationalité belge neutre du point de vue de l'immigration, Amendement N° 124 de Mme Van Cauter et consorts, 4 August 2011 (available from UNHCR on request) EUDO, Belgium: modes of protection against statelessness P. WAUTELET, " Deprivation of citizenship for 'jihadists': analysis of Belgian and French practice and policy in light of the principle of equal treatment ", January 2016. P. WAUTELET, "La nationalité belge en 2014 – L'équilibre enfin trouvé?" in <i>Droit de l'immigration et droit de la nationalité : fondamentaux et actualités</i> , Brussel, Larcier, 2014, pp. 337-341 Constitutional Court (Arret n. 16/2018 du fevrier 2018 2018-016f (europeanrights.eu)) |
| PRS.8.b | | Who is the competent authority for deprivation of nationality and what procedural safeguards are in place (e.g. due process, fair trial, participation in the proceedings, legal aid, decision in writing with reasoning, judicial oversight, appeal, time limit, subject to prior sentencing)? | 1961 Convention : Article 8(4) ECN : Articles 10 to 13 Principles on Deprivation of Nationality : Principle 7. Deprivation of nationality must be carried out in pursuance of a legitimate purpose, provided for by law, necessary, proportionate and in accordance with procedural safeguards; Principle 8: Everyone has the right to a fair trial or hearing and to an effective remedy and reparation. ILEC Guidelines (2015) : The consequences of a decision to deprive somebody of his nationality must be assessed against the principle of proportionality. Adequate procedural safeguards are essential. Decisions should only take effect when the (judicial) decision cannot be challenged anymore. | Competent authority: Art. 23: Court of Appeal Art. 23/1: Ordinary (civil or criminal) Judge (in practice included in criminal procedure or procedure for annulment of marriage) Art. 23/2: Ordinary (civil or criminal) Judge (in practice included in criminal procedure) Time limit: Art. 23: - Fraud during acquisition: deprivation maximum 5 years after acquisition of nationality - Acting in serious violation of duties as Belgian nationals: no time limit Art. 23/1: | Art. 23 of the Belgian Nationality Code NANSEN, ENS and ISI, Joint Submission to the Human Rights Council . Universal Periodic Review, 38th Session, 3rd Cycle, May 2021 |

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| | | | | <ul style="list-style-type: none"> - Grave crimes: crime committed maximum 10 years after acquisition of nationality (except for international crimes: no time limit) - crime facilitated by the possession of Belgian nationality: crime committed maximum 5 years after acquisition of nationality - deprivation following annulment of marriage: no time limit Art. 23/2: no time limit <p>Subject to prior sentencing: Art. 23: no prior sentencing required Art. 23/1: prior conviction or annulment of marriage by judicial authority required Art. 23/2: prior conviction required</p> | |
| PRS.8.c | | Are provisions on deprivation of nationality applied in practice? Have they been applied even where it results in (risk of) statelessness? If available, please provide any sources of data or information on cases that resulted in statelessness. | | Yes, provisions on deprivation of nationality are applied in practice. | Response by the Minister of Justice to Parliamentary Question Koen Metsu , N° 2301, 10 July 2018. VAN DE PUTTE, M., "Terrorisme als grond voor vervallenverklaring van de Belgische nationaliteit", T. Vreemd. 2021, nr.1, p. 6 |
| PRS.8.d | | Are there safeguards in law and practice to prevent renunciation or other forms of voluntary loss of nationality from resulting in statelessness? | 1961 Convention : Article 7 ECN : Articles 7 and 8 | There is a safeguard against statelessness included in all provisions on voluntary loss of nationality. | Art. 22(1) of the Belgian Nationality Code |
| PRS.8.e | | Are there any provisions on deprivation of nationality in a national security context (regardless of whether they could render a person stateless)? Please describe these provisions and if/how they are applied in practice. | Principles on Deprivation of Nationality Principle 4: States shall not deprive persons of nationality for the purpose of safeguarding national security. Where provisions exist, these should be interpreted narrowly and in accordance with international law standards. UNHCR Guidelines on Statelessness No.5 (2020) : Laws that permit deprivation of nationality on the grounds of terrorism should be publicly available and precise enough to enable individuals to understand the scope of impermissible conduct. | Articles 23, 23/1 and 23/2 BNC provide for deprivation of nationality on the following grounds : <ul style="list-style-type: none"> - Acting in serious violation of duties as Belgian nationals - conviction for certain grave crimes and punished by at least 5 years of imprisonment - conviction for a crime the commission of which was facilitated by the possession of Belgian nationality - conviction for a terrorist offense and punished by at least 5 years of imprisonment. These provisions are applied in practice. | Articles 23, 23/1 and 23/2 of the Belgian Nationality Code VAN DE PUTTE, M., "Terrorisme als grond voor vervallenverklaring van de Belgische nationaliteit", T. Vreemd. 2021, nr.1, p. 6 |
| PRS.8.f | | Are there any provisions on deprivation of nationality that directly or indirectly discriminate a person or group of persons on any ground prohibited under international law or that discriminate between nationals? Please describe these provisions and if/how they are applied in practice. | ICCPR : Article 26 1961 Convention : Article 9 ECN : Article 5 Principles on Deprivation of Nationality : Principle 6. Prohibited grounds for discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation. Each State is also bound by the principle of non-discrimination between its nationals. | Yes. The law protects those who have acquired their nationality from a parent or on the basis of birth in Belgium from certain forms of deprivation, so these provisions only apply to naturalised Belgians. | Articles 8, 9 and 11 of the Belgian Nationality Code |
| PRS.8.g | | Are there safeguards to prevent derivative loss of nationality (i.e., loss of nationality on the basis that a parent or a spouse has been deprived of that nationality)? Please describe the potential impact of deprivation on children and spouses. | CRC : Articles 2(2), 7 and 8 CEDAW : Article 9(1) Principles on Deprivation of Nationality : States must take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members (Principle 9.7). | There is a safeguard against statelessness in all provisions permitting deprivation of Belgian nationality, except if nationality was acquired by fraud. In this case, even if the person does not have another nationality, deprivation of nationality will be ordered after the expiry of a reasonable period determined by the Court to allow the person to try and recover their original nationality. 1. If a parent loses Belgian nationality by deprivation (in case of fraud, sham marriage or criminal sentence above 5 years of | Article 23 Belgian Nationality Code |

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| | | | <p>The derivative loss of nationality is prohibited (Principle 9.8).</p> | <p>imprisonment or severely failing in their duties as a Belgian national), children will not suffer derivative loss of nationality.</p> <p>2. If a parent loses Belgian nationality other than by deprivation, children under 18 years of age who are not emancipated and over whom they exercise parental authority as a parent or adopter automatically lose their Belgian nationality on the same date.</p> <p>Exceptions: a) their other parent is still Belgian or b) the children do not have another nationality or do not acquire another nationality as a result, and they would then become stateless.</p> <p>3. If a child has acquired Belgian nationality by descent from a parent and it is established before age 18 or the child is emancipated that they are not in fact the child of this parent, the child loses Belgian nationality.</p> | |
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Resources

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| RES.1.a | Published judgments | Please list the most relevant judgments relating to statelessness and include links to the cases (where available). | | <p>Court of Cassation:</p> <p>Court of Cassation, 27 September 2007 (in French)</p> <p>Court of Cassation, 6 June 2008 (in French)</p> <p>Court of Cassation, 22 January 2009 (in French)</p> <p>Court of Cassation, 23 January 2017 (in Dutch).</p> <p>Court of Cassation, 26 February 2021 (in Dutch)</p> <p>Court of Cassation, 21 June 2021 (unpublished)</p> <p>Court of Cassation, 19 November 2021 (in French)</p> <p>Court of Cassation, 24 January 2022 (in Dutch)</p> <p>Courts of Appeal:</p> <p>Court of Appeal Brussels, 7 December 2006 (in Dutch)</p> <p>Court of Appeal Ghent, 4 January 2007 (in Dutch)</p> <p>Court of Appeal Ghent, 5 February 2009 (in Dutch)</p> <p>Court of Appeal Ghent, 10 march 2016 (in Dutch)</p> <p>Court of Appeal Ghent, 16 June 2016 (in Dutch)</p> <p>Court of Appeal Ghent, 20 April 2017 (in Dutch)</p> <p>Court of Appeal Brussels, 5 June 2018 (in Dutch)</p> <p>Court of Appeal Antwerp, 3 October 2018 (in Dutch)</p> <p>Court of Appeal Liège, 30 January 2020 (in German)</p> <p>Court of Appeal Liège, 8 May 2020, unpublished</p> <p>Court of Appeal Liège, 3 March 2022 (in German)</p> <p>Court of Appeal Liège, 14 July 2022, unpublished (in German)</p> <p>Courts of First Instance / Family Courts:</p> <p>Court of First Instance Ghent, 4 March 2010 (in Dutch)</p> <p>Court of Frist Instance Ghent, 6 October 2011 (in Dutch)</p> <p>Court of Frist Instance Bruges, 20 April 2015 (in Dutch)</p> | |

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| | | | | <p>Court of First Instance Bruges, 23 November 2015 (in Dutch)</p> <p>Court of First Instance Antwerp, 2 March 2016 (in Dutch)</p> <p>Court of First Instance Bruges, 12 June 2017 (in Dutch)</p> <p>Court of First Instance Bruges, 5 February 2018 (in Dutch)</p> <p>Court of First Instance Mons, 17 July 2018 (in French)</p> <p>Court of First Instance East Flanders, division Gent, 22 December 2022 (unpublished)</p> <p><i>On residence rights:</i></p> <p>Constitutional Court:</p> <p>Constitutional Court, 17 December 2009 (in French)</p> <p>Constitutional Court, 11 January 2012 (in French)</p> <p>Constitutional Court, 22 February 2018 (in French)</p> <p>Court of Cassation:</p> <p>Court of Cassation, 5 November 2012 (in French)</p> <p>Court of Cassation, 27 May 2016 (in French)</p> <p>Court of Cassation, 27 June 2016 (in Dutch)</p> <p>Court of Cassation, 8 April 2022 (in French)</p> <p>Courts of Appeal:</p> <p>Court of Appeal Brussels, 17 September 2014 (in Dutch)</p> <p>Court of Appeal Brussels, 29 October 2014 (in Dutch)</p> <p>Court of Appeal Mons, 25 May 2018 (in French)</p> <p>Conseil du Contentieux des Etrangers (CCE):</p> <p><i>Since 2010 the CCE publishes nearly all its judgments. It is therefore impossible to list all judgments mentioning statelessness.</i></p> | |
| RES.2.a | Free legal assistance | Are there specialised lawyers or organisations providing free advice to stateless people or those at risk of statelessness? If yes, please describe. | UNHCR, Handbook on Protection (2014) : Applicants must have access to legal counsel. | <p>Objectif asbl provides free advice on Belgian nationality, including the safeguard against statelessness at birth.</p> <p>NANSEN recently extended its monitoring and legal services activities to stateless persons.</p> <p>Association pour le droit des étrangers (ADDE)</p> <p>Centre fédéral Migration (MYRIA)</p> | CCE judgments can be found at: https://www.rvv-cce.be/fr/arr |

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| RES.3.a | Literature | Is there domestic academic literature on statelessness? Please list and provide references and hyperlinks (where available). | | <p>Chiurulli (C.), La protection des apatrides : état des lieux, 2014</p> <p>Crocart, (H.), Le statut d'apatride en Belgique: focus sur la situation des Palestiniens, Revue du droit des étrangers, 2020, 473.</p> <p>De Hemricourt de Grunne (M.), « Reconnaissance et statut des apatrides en Belgique », Annales de droit de Louvain, 1999, 343-388.</p> <p>De Leebeeck (L.), « Prévention et protection juridiques des situations d'apatridie en Belgique », Revue du droit des étrangers, 2006, 531-533.</p> <p>Franssen, M., MINY, X., "To be, and not to be", la "reconnaissance juridictionnelle" de la Palestine dans le contentieux de l'apatridie en Belgique, R.B.D.I, 2020/1, 287-322</p> <p>Leclerc (P.), « Etat des lieux de l'apatridie : comment prévenir et réduire les situations d'apatridie tout en améliorant la protection des apatrides », Revue du droit des étrangers, 2006, 520-521.</p> <p>Lejeune (J.), « Aperçu de jurisprudence : la qualité d'apatride et le droit au séjour des apatrides reconnus », Revue du droit des étrangers, 2006, 522-530.</p> <p>Macq, C., Contours et enjeux de la déchéance de nationalité, Courrier hebdomadaire du CRISP 2021/30-31, 5-122.</p> <p>Merlin (C.), « Les difficultés rencontrées par les magistrats statuant sur les demandes d'apatridie », Revue du droit des étrangers, 2006, 534-538</p> <p>NANSEN, Guide pratique sur l'apatridie, June 2020</p> <p>Raymond (J.), "Childhood Statelessness Prevention in the Migratory Context: The Experience of Syrian Asylum Seekers in Belgium", Statelessness Working Paper Series No. 2017/04.</p> <p>Renauld (B.), « L'Apatridie en Belgique, état des lieux en 2012 » in Alen (A.), Joosten (V.), Leysen (R.), Verrijdt (W.) (eds.), <i>Liberæ Cogitationes, Liber amicorum Marc Bossuyt</i>, Intersentia, Antwerpen, 2013, 531-541.</p> <p>Rosemont (F.), « Présentation de l'office des étrangers », Revue du droit des étrangers, 2006, 539-540.</p> <p>Sarolea (S.), « L'apatridie : du point de vue interétatique au droit de la personne », Revue du droit des étrangers, 1998, p. 183-212.</p> <p>Stad Gent, Staatlozen: nergens en nooit onderdaan, overall en altijd vreemdeling. Praktijkgerichte handleiding, 2007.</p> <p>VAN DE PUTTE, M., Terrorisme als grond voor vervallenverklaring van de Belgische nationaliteit, T. Vreemd., 2021, nr. 1, p. 6.</p> <p>Vandervoort (L.), De Staatloze in België: op zoek naar een status met rechten en plichten, Tijdschrift voor Vreemdelingenrecht, 2007, 244-263.</p> | |
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| | | | | <p>Sarolea (S.), « Le Ministère de la justice et l'apatridie, note sous C.A. Bruxelles, 24 février 2000 », Revue du droit des étrangers, 2000, 107-115.</p> <p>Van Doren (W.), LEJEUNE (J.), CLAES (M.) and KLEIN (V), The Broadening Protection Gap for Stateless Palestinian Refugees in Belgium The Statelessness and Citizenship Review, Statelessness and Citizenship Review, Vol 2 No 2, 2020.</p> <p>Westerveen (G.), « Table ronde sur l'apatridie », Revue du droit des étrangers, 2006, 519.</p> | |
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